

ROBERT K. PHILLIPS, ESQ.
Nevada Bar No. 11441
MEGAN E. WESSEL, ESQ.
Nevada Bar No. 14131
LATISHA ROBINSON, ESQ.
Nevada Bar No. 15314
PHILLIPS, SPALLAS & ANGSTADT LLC
504 South Ninth Street
Las Vegas, Nevada 89101
(702) 938-1510
(702) 938-1511 (Fax)
rphillips@psalaw.net
mwessel@psalaw.net
lrobinson@psalaw.net

*Attorneys for Defendants
Walmart Inc. d/b/a Walmart
& Doug Ayerst*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARIA TERESA RUIZ RAMIREZ

Plaintiff,

v.

WALMART INC., a Foreign Corporation, d/b/a
WALMART; DOUG AYERST, an Individual;
DOE EMPLOYEE; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.:

[District Court, Clark County Case No.: **A-20-820685-C**, Dept. No.: XXXI]

**DEFENDANTS WALMART INC. DBA
WALMART & DOUG AYERST'S PETITION
FOR REMOVAL OF CIVIL ACTION**

[JURY DEMAND]

COMES NOW, Petitioners WALMART INC. DBA WALMART ("Walmart") and DOUG AYERST ("Ayerst")(collectively "Petitioners") by and through their counsel of record, the law office of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submit and respectfully show:

I.

Petitioners are named Defendants in the above-entitled action.

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II.

The above-entitled action was commenced by Plaintiff MARIA TERESA RUIZ RAMIREZ (hereinafter “Plaintiff”) on September 3, 2020 in the Eighth Judicial District in and for Clark County, District of Nevada. Plaintiff served a Summons and copy of her initial Complaint on Petitioners on September 8, 2020. Petitioners then filed a timely Answer September 28, 2020. True and correct copies of Plaintiff’s Complaint, Summons and Petitioner’s Answer are attached hereto as **Exhibits “A,” “B,” and “C,”** respectively. Plaintiff served a Petition for Exemption from Arbitration on October 16, 2020. A true and correct copy of Plaintiff’s Petition for Exemption from Arbitration (hereinafter “Petition for Exemption”) is attached hereto as **Exhibit “D.”**

Plaintiff’s October 16, 2020 Petition for Exemption is the “first paper” from which removability may be ascertained and which acknowledges that the amount in controversy in this action will exceed \$75,000.00. In her Petition for Exemption, Plaintiff claims she suffered injuries and damages caused by a fall at Walmart on August 25, 2019. *See* Exh. D at 2:5-6. Plaintiff now estimates that her past medical specials to date total \$23,525.00. *Id.* at 4:6. Plaintiff further states that Plaintiff continues to have severe pain and has been recommended for future medical procedures totaling \$87,000.00. Future treatments include up to three (3) lumbar facet bilateral injections of the L5-S1 level under fluoroscopic guidance per year. *Id.* at 3:4-10. Plaintiff’s alleged medical specials now total **\$110,525.00**. *Id.* at 4:15.

Based on her alleged past and future medical specials, Plaintiff’s damages clearly exceed the \$75,000.00 federal threshold. As such, there is no dispute that 28 U.S.C. §1446(b)’s \$75,000.00 amount in controversy requirement is met.

III.

This Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

IV.

This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332(a) and is one which may be removed to this Court by Petitioners, pursuant to 28 U.S.C. § 1441(a).

V.

Petitioners are informed, believes, and thereon alleges that Plaintiff is, and was at the time this action was commenced, a citizen of the State of California.

VI.

At the time this action was commenced, Petitioner Walmart was a Delaware corporation with its principal place of business in the State of Arkansas. As such, Petitioner Walmart is a citizen of the State of Delaware and a citizen of the State of Arkansas. Petitioner Doug Ayerst was the Store Manager at Walmart Store No. 2593 located at 2310 East Serene Avenue, Las Vegas, Nevada 89123. Plaintiff's subject incident occurred at Walmart Store No. 1560 at 6005 S. Eastern Avenue, Las Vegas, Nevada 89119. Doug Ayerst is not the Store Manager of the subject store in which Plaintiff was injured, was not present at the store, and has no personal firsthand knowledge of the subject incident. As such, Doug Ayerst's domicile shall not be taken consideration with respect to diversity as he is subject to an immediate motion to dismiss. Even if his domicile is taken into consideration, Doug Ayerst is a citizen of Nevada which is diverse from the citizenship of Plaintiff.

VII.

The above-entitled civil action is for personal and economic damages Plaintiff allegedly incurred from an incident at Walmart Store No. 1560 located in Las Vegas, Nevada (Clark County).

VIII.

A copy of Petitioners' Petition for Removal of Civil Action, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Plaintiff's Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for the Eighth Judicial District Court in and for Clark County, Nevada.

IX.

True and correct copies of all pleadings and papers served upon Petitioners in the above-entitled action are filed herewith.

X.

This Petition is filed with the Court within thirty (30) days after Petitioners was served with Plaintiff's Petition for Exemption. Plaintiff's Petition for Exemption was the "first paper" that put Petitioners on notice that Plaintiff's claimed damages clearly exceed the \$75,000 federal diversity jurisdiction threshold. (Exh. D at 4:10-15.) Given the amount of her past and future medical specials (\$110,525.00), Plaintiff's damages *clearly total over* \$75,000. Therefore, Plaintiff's anticipated

damages meets 28 U.S.C. §1332(b)'s amount in controversy requirement. *See* 28 U.S.C. §1332(a) (2015); *see also Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000) (reversing dismissal for lack of jurisdiction, relying, in part, on estimated future medical expenses to determine that the amount in controversy exceeded the jurisdictional amount); *see also Luckett v. Delta Airlines, Inc.*, 171 F. 3d 295, 298 (5th Cir. 1999) (holding that it was facially apparent from plaintiff's Complaint that claims exceeded \$75,000.00 where plaintiff alleged property damage, travel expenses, an emergency ambulance trip, a six-day hospital stay, pain and suffering, humiliation and a temporary inability to do housework); *see also White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (holding that it was facially apparent that plaintiff's wrongful termination exceeded \$75,000.00 based on the lengthy list of compensatory and punitive damages combined with a claim for attorney fees in her Complaint).

As such, it is wholly reasonable that these cumulative claims for damages and diversity of the parties meet the requisite requirements set forth by 28 U.S.C. §1441(b) and 28 U.S.C. §1332.

PRAYER

WHEREFORE, Petitioners pray that the above-entitled action be removed from the Eighth Judicial District Court in and for Clark County, Nevada, to this Court.

DATED this 19th day of October, 2020.

PHILLIPS, SPALLAS & ANGSTADT LLC

/s/ Latisha Robinson

ROBERT K. PHILLIPS, ESQ.
Nevada Bar No. 11441
MEGAN E. WESSEL, ESQ.
Nevada Bar No. 14131
LATISHA ROBINSON, ESQ.
Nevada Bar No. 15314
504 South Ninth Street
Las Vegas, Nevada 89101

*Attorneys for Defendant
Walmart Inc. d/b/a Walmart &
Doug Ayerst*

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2020, I served a true and correct copy of the foregoing, **DEFENDANTS WALMART, INC. DBA WALMART & DOUG AYERST'S PETITION FOR REMOVAL OF CIVIL ACTION**, as follows:

☐ By facsimile addressed to the following counsel of record, at the address listed below:

☐ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ By Hand Delivery (ROC); and/or

☒ By Electronic Filing/Service Notification to:

ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
BOYD B. MOSS III, ESQ. Nevada Bar No. 8856 JOHN C. FUNK, ESQ. Nevada Bar No. 9255 MOSS BERG INJURY LAWYERS 4101 Meadows Lane, Suite 110 Las Vegas, Nevada 89107	Phone: 702-222-4555 Fax: 702-222-4556	Plaintiff

/s/ Clarissa Reyes

An Employee of PHILLIPS, SPALLAS & ANGSTADT LLC